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Withdrawals Created Under the Authority of Section 24 of the Federal Power Act

Opinion Paper

June 25, 1999

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Table of Contents

Subject 1

Opinion 1

Importance to the Department of the Interior 1
- Reservations 1
- Responsibilities 2

Overview of Evidence Supporting the Opinion 2
- The Development of a Waterpower Policy 2
- The Legislative History of the Federal Water Power Act 6
  - The Debates During 1914-1917 6
  - The Debates During 1918-1920 9
- The Original Federal Water Power Act 11
  - Reservations 11
  - Responsibilities 13
    - Withdrawals 13
    - Split Estate 15
- **Amendments to the Federal Power Act and Subsequent Actions** 16

..... 18
- **The Supreme Court Ruling of 1984** 19

Summary 19
- The first sentence of Section 24: 19

The second sentence of Section 24: 19
- The third sentence of Section 24: 20
- The remaining language of Section 24: 20

Appendix A:
Time Line for the Federal Water Power Act
April 16, 1999 21

Index 26

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Subject

Withdrawals created under the authority of Section 24 of the Federal Power Act (FPA).

Opinion

Any application for a proposed hydroelectric power plant on public lands[1] creates an automatic withdrawal. These withdrawals are created by the authority of Section 24 of the Federal Power Act. It is my opinion that:

- These withdrawals qualify as a "reservation" under the definition of Section 3(2) of the FPA, 16 U.S.C. §766(2) (1979).[2]

- The Secretary of the Interior (Secretary) has responsibilities for these withdrawals.

Importance to the Department of the Interior

Reservations

The facts presented here demonstrate that these automatic withdrawals are reservations. This is of interest to the Secretary because if they are reservations under the Secretary's responsibility, then the Secretary has conditioning authority over every licensing and relicensing action by the Federal Energy Regulatory Commission (FERC).

These automatic withdrawals are present in every case of licensing and relicensing on public lands. Because of the authority they give to one of the Departments, their importance needs to be recognized. If these withdrawals are a reservation under the definition in the FPA, then the Secretary of the Department who is responsible for the reservation has the right to condition the license or relicense for the benefit of other resources within that Department's responsibility. This authority and responsibility are stated in Section 4(e) of the FPA. The courts have found that FERC must mold the license as demanded by the Secretary with this authority. If, for instance, the Secretary has a reservation under the definition in the FPA, then the Secretary has

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[1] "'Public lands' means such lands and interest in lands owned by the United States as are subject to private appropriation and disposal under public-land laws. It shall not include 'reservations,' as hereinafter defined." Section 3(2) of the FPA.

[2] "'Reservations' means national monuments, national parks, national forests, tribal lands embraced within Indian reservations, military reservations, and other lands and interests in lands owned by the United States, and withdrawn, reserved, or withheld from private appropriation and disposal under the public-land laws; also lands and interests in lands acquired and held for any public purpose." Section 3(3) of the FPA.

the responsibility to condition licenses and relicenses in light of other resource responsibilities. The Department of the Interior (DOI) should confirm its authority over these withdrawals in order to protect other resource interests and the interests of the American people.

Responsibilities

If the Department of the Interior would confirm its responsibility over these withdrawals, it would retain the authority that Congress intended for the Secretary of the Interior. If the Secretary is not responsible for these withdrawals, then the Secretary of Energy may wish to assume a position of responsibility. This would be an adverse position for the Secretary of the Interior. Many of the current attempts to streamline the relicensing process through interagency committees and legislation are floundering because of the lack of understanding of Congress' intent when it passed the FPA and gave the Secretary of the Interior these responsibilities. If the Secretary were to exercise this authority in concert with other legislation, the process of relicensing would become very straightforward and efficient for applicants, State agencies, and Federal agencies, and would work for the benefit of the public. The Secretary has had the waterpower authority and has maintained expertise in the discipline of hydraulic engineering since 1901 and should exercise the legislated authority to protect this industry. Additionally, the Secretary should take responsibility for withdrawal reviews, which FERC has been doing by default.

Overview of Evidence Supporting the Opinion

Five significant events are discussed as key evidence: developing a waterpower policy, the legislative history of the Federal Water Power Act, the original Federal Water Power Act, amendments to the Federal Power Act, and the Supreme Court ruling of 1984 that clarified the Secretary's continuing responsibilities. All of these events have a direct effect on the issue and subsequent conclusions.

The Development of a Waterpower Policy

Between 1879 and 1920, Congress was actively changing the land and resource policies of the United States (U.S.). One thing that was forcing one of the changes was the development of hydroelectric power generation (waterpower). During these years, Congress legislated a waterpower policy, which evolved out of land policy and was first managed by the Department of the Interior. The issues that were debated as this policy developed helped shape the language in the Federal Power Act (which was first called the Federal Water Power Act).

When the United States Geological Survey (USGS) was formed in the Department of the Interior, its mission was to make a formal, scientific classification of land. USGS was to look at the potential uses of land and determine the highest and best uses as part of using science to make land management decisions. Mill sites had been recognized for their value since 1796 by the General Land Office, and the sites made the land more valuable. Therefore, as the

waterpower industry developed, it was included in the developing debates of water and land policy.

The Act of March 3, 1879,[3] which created the USGS, gave the Director, USGS, the power to make land classifications. Specific legislation had also been passed directing the Secretary by means of the USGS to investigate the practicability of constructing reservoirs[4] and segregate sites for reservoirs.[5] These reservoir sites were intended to be preserved permanently for future generations.[6]

On February 15, 1901,[7] Congress passed legislation to allow the Secretary to permit waterpower development under rights-of-way. Congress then passed the first legislation that allowed the patent of land with a waterpower reservation in the title:[8] "That the Secretary of the Interior be, and he is hereby, authorized in his discretion, to sell and convey by patent with such reservations as to flowage rights, dam sites, and mill sites appurtenant to water powers, as he may prescribe...." (34 Stat. 377).

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[3] March 3, 1879, Chapter 182, 20 Stat. 394; 43 U.S.C. 31. "*An Act making appropriations for sundry civil expenses of the government for the fiscal year ending June thirtieth, eighteen hundred and eighty, and for other purposes.*"

[4] March 20, 1888, No. 7, 25 Stat. 618. *"Joint Resolution directing the Secretary of the Interior by means of the Director of the Geological Survey to investigate the practicability of constructing reservoirs for the storage of water in the arid region of the United States, and to report to Congress."*

[5] October 2, 1888, Chapter 1069, 25 Stat. 526; 43 U.S.C. 662. *"An Act making appropriations for sundry civil expenses of the government for the fiscal year ending June thirtieth, eighteen hundred and eighty-nine, and for other purposes."*

[6] April 29, 1891, in a letter to the Commissioner of the General Land Office, the Acting Secretary, George Chandler states, "Temporary withdrawals have heretofore been made for the purposes of these sites, and it is now necessary to make the withdrawals absolute for such lands..."

[7] February 15, 1901, Chapter 372, 31 Stat. 790; 43 U.S.C. 959. "*An Act Relating to rights of way through certain parks, reservations, and other public lands.*"

[8] June 21, 1906, Public, No. 258, Chapter 3504, 34 Stat. 325-384. "*An Act Making appropriations for the current and contingent expenses of the Indian department, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and seven.*"

President Roosevelt's message to Congress of April 13, 1908, "...is a landmark in the history of water-power legislation. It may be looked upon as the Confession of Faith of the Conservationists."[9] The essence of the speech as it pertains to Section 24 of the FPA is as follows:

> "We are now at the beginning of a great development in water power. Its use in electrical transmission is entering more and more largely into every element of the daily life of the people. *Already the evils of monopoly are becoming manifest*; already the spirit of the past shows the necessity of caution in making unrestricted grants of this power.
>
> "*The present policy pursued in making these grants is unwise in giving away the property of the People in the flowing waters* to individuals or organizations practically unknown, and granting in perpetuity these valuable privileges in advance of the formulation of definite plans as to their use. *In some cases the grantees apparently have little or no financial or other ability to utilize the gift, and have sought it merely because it could be had for the asking.*
>
> "In place of the present haphazard policy of permanently alienating valuable public property we should substitute a definite policy along the following lines:
>
> "First. *There should be a limited* or carefully guarded *grant* in the nature of an option or opportunity afforded within *a reasonable time for development of the plant* and for execution of the project.
>
> "Second. Such a grant of concession should be accompanied in the act making the grant by a provision expressly making it the duty of the designated official to *annul the grant if the work is not begun or plans are not carried out in accordance with the authority granted.*
>
> "Third. *It should also be the duty of some designated official to see to it that in approving the plans the maximum development of the navigation and power is assured*, or at least that in making the plans these may not be so developed as ultimately to interfere with the better utilization of the water or complete development of the power.
>
> "Fourth. *There should be a license fee or charge* which, though small or nominal at the outset, can in the future be adjusted so as to secure a control in the interest of the public.
>
> "Fifth. Provision should be made for the termination of the grant or privilege at a definite time, leaving to future generations the power or authority to review or extend the concession in accordance with the conditions which may prevail at the time."[10]

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[9] Kerwin, Jerome G. 1926. Federal Water-Power Legislation, Columbia University Press, New York. p. 116.

[10] Ibid., pages 117-119.

Subsequent to this speech, Congress passed the first formal waterpower withdrawal authority, which was made under the authority of March 3, 1909:[11] "SEC. 22. That the Secretary of the Interior be, and he is hereby, authorized, in his discretion, to reserve from location, entry, sale, or other appropriation all lands within said Flathead Indian Reservation chiefly valuable for power sites or reservoir sites, and he shall report to Congress such reservations" (35 Stat. 796). This was followed in quick succession with more withdrawal acts on May 13, 1910; June 1, 1910; and June 20, 1910.

Informally, President Theodore Roosevelt instructed the Secretary to prepare a list of power sites; he then withdrew the sites under administrative powers. The Taft administration instructed the USGS to make an investigation of waterpower sites in order that necessary withdrawals may be made to protect such powersites pending proposed legislation.[12] The first withdrawal made under this directive was on May 3, 1909. Congress gave withdrawal authority to the President Act of June 25, 1910.[13] Congress continued to pass legislation directing the Secretary to make withdrawals for reservoir sites and waterpower sites. Before the actual formal debate began in Congress on a comprehensive waterpower bill, Congress passed legislation to allow the Secretary to reserve from sale lands chiefly valuable for power purposes in the former Fort Niobrara Military Reservation.[14]

This legislative history of waterpower issues is pertinent to understanding the intent of Congress in the wording of Section 24, FPA. It demonstrates that the President and Congress were debating the developing waterpower policy and were consistently giving the Department of the Interior more and more responsibility as the nation's experts to investigate and make withdrawals for the protection of waterpower interests. The development of the sites was originally intended to be accomplished under the 1901 right-of-way act. There was a cadre of staff within the USGS that were making the recommendations for withdrawals to the Secretary, and through the Secretary to the President. They were the proper waterpower officials of the Executive Branch.

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[11] March 3, 1909, Public, No. 316, Chapter 263, 35 Stat. 781-815. "*An Act Making appropriations for the current and contingent expenses of the Indian Department, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and ten.*"

[12] April 23, 1909, memorandum from R.A. Ballinger, Secretary of the Interior, to the Director, USGS.

[13] June 25, 1910, Chapter 421, 36 Stat. 847-848; 16 U.S.C. 471, 43 U.S.C. 141. "*An Act To authorize the President of the United States to make withdrawals of public lands in certain cases.*"

[14] A partial listing is included (see Appendix A) and an in-depth listing can be found in Kuka, Tommy. It Has Been Debated, Decided, and Declared - A Chronicle of the Requirements for the Waterpower and Reservoir Resources Program (available in the BLM Library in Denver, CO).

The Legislative History of the Federal Water Power Act

In the history of building dams prior to 1917, Congress always seemed to make a distinction between dams on navigable rivers and dams on public lands. The Committee on Interstate and Foreign Commerce would submit bills to allow non-Federal-Government construction of dams on **navigable waters**, under the administration of the **Secretary of War** (these recommendations for legislation did not include controlling dam building on public lands). In the same sessions, the Committee on Public Lands would submit bills related to the development of waterpower on **public land**, under the control of the **Secretary of the Interior** (of course, these proposals did not include controlling dam building on navigable rivers). For this discussion, it is enough to know that there were debates occurring about the Secretary of War's responsibility and the State government's responsibility, as well as the Secretary of the Interior's responsibility. Because Section 24, FPA, pertains to the Secretary of the Interior's responsibility, these other debates do not pertain.

The Debates During 1914-1917

Beginning in 1914, Secretary of the Interior Franklin K. Lane held conferences, and as a result, a tentative measure was introduced to the House. On August 24, 1914, a measure was passed by the House, although it did not gain approval by the Senate.[15] It contained language that formed the roots of the final legislation. The Committee was seeking efficient legislation that would allow the development of waterpower on public lands by non-Federal-Government parties. However, they were also trying to comply with President Roosevelt's requests and the existing waterpower policy. Within the hearings of the Public Lands Committee, the waterpower policy was clearly understood, as reflected in this statement of Mr. O.C. Merrill, Chief Engineer, Department of Agriculture, Forest Service, Washington, D.C., and coauthor of the FPA:[16]

> "I appear before you as a technical advisor... When I concluded my statement last night I was about to read to the committee what I have called an outline of a Federal water-power policy, which I had prepared some time prior to the introduction of any bill before this committee. I wish to let it pass for the present as a mere statement. Certain features which are in it I hope to discuss later."

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[15] Hearings, House Committee on Public Lands (63rd Cong., 3rd Session) on HR 16673, *An Act To provide for the development of water power and the use of public lands in relation thereto, and for other purposes,* Government Printing Office, Washington, DC, 1915, page 12.

[16] Hearings, House Committee on Public Lands (63rd Cong., 2nd Session) on HR 14893, May 8, 1914, pages 413 and 414. *Note that the number of the measure was changed after these hearings to HR 16673.*

"First, with reference to the ownership of power sites.

1. All public lands having a prospective value for water power use should be designated as valuable for water power, and thereafter such lands should be patented only upon the condition expressed in the patent that the right to use such lands for water-power purposes is reserved in perpetuity exclusively to the United States and that such lands may be used or leased by the United States for water-power purposes upon terms equitable to the patentee.

2. Whenever designated lands will be immediately or especially valuable for water-power purposes, whenever an application for such use has been made or not, or whenever designated lands are applied for for power purposes they should be immediately withdrawn from all forms of entry, except such as will not interfere with the construction, maintenance or operation of water-power works thereon.

3. All private lands which are within power sites, to be leased by the Government - that means all private lands in connection with public lands in the same power site - and all water rights attached to such lands should be deeded to the Government by the lessee at an appraised valuation not to exceed the cost of acquisition, and the Government should remit all rentals charges until such time as the accrued rentals liquidate the appraised valuation, plus interest thereon at current rates."

"Second, with respect to the utilization of power sites:

1. Power sites should be disposed of by lease, those having a capacity of less than 1,000 horsepower to be leased to individuals, associations, and private or municipal or corporations; those having a capacity in excess of 1,000 horsepower to be leased to municipal or public-utility corporations only."

On April 29, 1914, Secretary Lane, added his comments to the whole House, which are included in the Congressional Record of 1915:[17]

"Should the Government allow its dam and reservoir sites and other lands valuable for power development to pass from its hands forever?"

"(1) It has been the policy of Congress from the inception of power development in the United States only to grant permission to use such lands and not to sell or give away the lands in perpetuity. Acts of Congress of May 18 [sic 14], 1896 (29 Stat. 120); February 15, 1901 (31 Stat. 790); February 7, 1905 (33 Stat. 702); May 1, 1906 (34 Stat. 163); and, March 4, 1911 (36 Stat. 1253)."

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[17] Water-Power Bill, Hearing Before the Committee on Public Lands, United States Senate, Sixty-Third Congress, Third Session on H.R. 16673, *An Act to Provide for the Development of Water Power and the Use of Public Lands in Relation Thereto, and for Other Purposes, Printed for the Use of the Committee on Public Lands*, Government Printing Office, Washington, DC, 1915, page 812.

"(2) The general law applicable to the use of public lands for the development of electrical power, the act of February 15, 1901, authorizes the grant only of a permission to use public lands and reservations for this purpose, expressly providing that any such permission may be revoked by the Secretary of the Interior, or his successor, in his discretion, and shall not be held to confer any right or easement, or interest in, to, or over any public land or reservation. The general law now in effect relative to granting of rights of way for transmission lines, the act of March 4, 1911, only permits the approval of such rights of way for periods not exceeding 50 years."

"(3) The future of water power is as still unknown. It promises to be an invaluable resource; (a) because it replaces itself, while coal and oil do not; (b) because it can be transported at slight expense and for long distances; (c) because the development of numerous other western resources, low grade ores, irrigation of arid lands by pumping, and the establishment of manufacturing enterprises are dependent upon cheap and abundant electrical power."

"(4) To at this time grant such lands in perpetuity to private corporations or individuals is as to divest the Federal Government, as well as the several States, of a large measure of the control which it might otherwise exercise over this resource by law or regulation and would place beyond its power the opportunity of providing by law such different method of use or disposition as the future may show to be best adapted to the public interests."

Section 10 of this proposed legislation provided the wording that contains provisions for the Secretary to 1) make the determination "...that the value of any lands...will not be materially injured...by either location, entry or disposal, the same may be allowed..." and, 2) issue patents to the land, which included waterpower reservations. The idea that this was the responsibility of the Secretary, which is central to Section 24, FPA, originated with the Public Lands Committee in this legislation in 1914, and remained a constant part of subsequent legislation, including the final bill, even when the final bill changed to wording to the responsibility of the Federal Power Commission (FPC).

On January 8, 1916 (H.R. 408), the House of Representatives again passed legislation relating to waterpower on the public domain. Section 1 of both of these draft acts gives the Secretary of the Interior the authority and empowerment to lease any part of the public lands for the purpose of developing waterpower. Section 10 of this act is essentially the same as Section 10 of the 1914 version.

On January 5, 1916, Representative Scott Ferris (Oklahoma), Chairman Committee on Public Lands, made a statement that explains part of Section 24, FPA:

"Mr. Chairman, there are certain salient provisions that I think every adequate water-power bill should contain. I shall try to enumerate them."

"First. No legislation, Executive order, or departmental ruling should permit the patenting or the title in fee to pass out of the Federal Government under any conditions. The fee title should be reserved in perpetuity to the United States."[18]

He then discussed the proposed bill section by section. When he reached section 10, he said:

"Section 10 authorizes the Secretary of the Interior to allow lands that have been heretofore reserved for water-power purposes to be used for other and additional purposes, subject always to the superior right of the Government or its assignees to develop hydroelectric power thereon. It will be observed that many waterpower sites have been withdrawn over the country under the Pickett Act of June 25, 1910. In some instances large areas were withdrawn, portions of which in all probability will not be necessary. It is therefore thought the part of wisdom to authorize the Secretary of the Interior to allow these lands to be used for other purposes, always reserving to the federal government the right of overflow and always subordinate to the superior use of hydroelectric development, and for this reason the section was incorporated. The provision in section 10, in line 4, page 9, provides that where locations, entries, or selections are filed or have been allowed the land shall proceed to patent, subject to a limitation to be inserted in the patent which shall preserve to the Federal Government all rights for power purposes."[19]

These statements clearly explain the intent of the authors of Section 24, FPA, the relevant portion of which was enacted without substantial change. The subsequent debates touch briefly on these topics (leasing, interim use, and patents with a reservation), though the wording was changed slightly, but this is where the issues were first and foremost introduced and debated.

The Debates During 1918-1920

In 1918, there was a significant change in direction. Instead of pursuing a waterpower bill for the Corps of Engineers, and another bill for the DOI, the President asked Congress to work toward a combination, comprehensive bill. This change made the final bill more complicated and changed the wording of Section 24.

In 1917, this new approach was initiated: "A draft of a comprehensive act to cover the development of water-power sites under Federal control was prepared by E.C. Finney, Chairman of the Board of Law Review of the Department of the Interior, George Otis Smith, N.C. Grover,

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[18] January 5, 1916, Debate; Congressional Record - House, page 525.

[19] January 5, 1916, Debate; Congressional Record - House, page 527.

Herman Stabler, and W.B. Heroy of the Geological Survey[20] and O.C. Merrill of the Forest Service, and filed early in December 1917 by Congressman Scott Ferris, Chairman of the Public Lands Committee."[21] In an effort to avoid the stalemate of previous sessions, President Wilson asked the Secretaries of War, Agriculture, and Interior to work together and support joint legislation for comprehensive development of waterpower. He even drafted legislation that contained the proposal for a Federal Power Commission (FPC) and an automatic withdrawal for the private development of waterpower. This combined effort was finally successful in comprehensive legislation. The wording of the final FWPA reflected a Federal Power Commission (FPC) that was not envisioned in these earlier drafts. Instead of the Secretary issuing a lease, the FPC would grant a permit or license. Instead of the Secretary making a determination, the Commission, which includes the Secretary, who would make the determination. However, the FWPA kept the language that, once the determination was made, the opening orders and the patenting authority remain with the Department of the Interior.

Even within the period of debate over the final FPA, Congress passed more legislation authorizing the Secretary to classify power site lands, which were subject to withdrawal.[22] Therefore, at the time of passage of the FPA, the President of the U.S. was making withdrawals, the Secretary was making withdrawals, and the Director of the USGS was making classifications. However, the waterpower policy as described earlier had not changed:

> Thirty-seven days before the actual passage of the Federal Water Power Act (now the FPA), a member of Congress from Georgia [Mr. Gordon Lee] made the following statement:
>
> "Any lands of the United States proposed to be used for power development are to be automatically reserved for such purposes as soon as the

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[20] E.C. Finney, George Otis Smith, N.C. Grover, Herman Stabler, and W.B. Heroy were the Department of the Interior's administrative officials for the office that made and managed the existing withdrawals that had been legislated and made for waterpower and reservoir sites.

[21] Rabbitt, Mary C., Minerals, Lands, and Geology for the Common Defense and General Welfare, Volume 3, U.S. Government Printing Office, 1986, page 188.

[22] February 26, 1919, Public, No. 219, Chapter 47, 40 Stat. 1179-1181. "*An Act To accept from the Southern Oregon Company, a corporation organized under the laws of the State of Oregon, a reconveyance of the lands granted to the State of Oregon by the Act approved March third, eighteen hundred and sixty-nine, entitled 'An Act granting lands to the State of Oregon to aid in the construction of a military wagon road from the navigable waters of Coos Bay to Roseburg, in said State,' commonly known as the Coos Bay Wagon Road grant, to provide for the disposition of said lands, and for other purposes.*"

application is filed, and the title to such lands will be forever reserved to the United States."[23]

There are numerous statements on the policy of development of waterpower during the period 1909 to 1920. The three that have been quoted here (O.C. Merrill, Secretary Lane, and Congressman Gordon Lee from Georgia) summarize the prevailing thought. These statements reflect the consistent arguments of policy stated throughout the debates. I would submit these statements as arguments of the intent of the FPA, that it was consistent with the existing policy, and that the policy is that waterpower sites belong to the Federal Government.

The Original Federal Water Power Act

When the FPA was enacted, it was originally called the Federal Water Power Act (FWPA). As proposed by the President, it was administered by a Federal Power Commission composed of the Secretary of Agriculture, the Secretary of the Interior, and the Secretary of War. The first and the third sentences of Section 24 of the FPA (which consists of only one paragraph) cover a number of important issues.

The first sentence states, "That any lands of the United States included in any proposed project under the provisions of this Act shall from the date of filing of application therefor be reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by the commission or by Congress." There are two important issues covered in this sentence: a built-in automatic withdrawal, and the involvement of the Commission or Congress.

The third sentence states, "Whenever the commission shall determine that the value of any lands of the United States so applied for, or heretofore or hereafter reserved or classified as power sites, will not be injured or destroyed for the purposes of power development by location, entry, or selection under the public-land laws, the Secretary of the Interior, upon notice of such determination, shall declare such lands open to location, entry, or selection, subject to and with a reservation of the right of the United States or its permittees or licensees to enter upon, occupy, and use any part or all of said lands necessary, in the judgment of the commission, for the purposes of this Act, which right shall be expressly reserved in every patent issued for such lands; and no claim or right to compensation shall accrue from the occupation or use of any of said lands for said purposes." In this sentence, there are three distinct issues covered: withdrawals, interim use, and patents with a reservation.

Reservations

A withdrawal must meet the criteria under the definition in Section 3 of the FPA to be considered a reservation. The following statements are provided to emphasize that the waterpower withdrawals, including the automatic withdrawals under the provisions of FPA, meet the criteria.

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[23] May 4, 1920, Debates H.R. 3184; Congressional Record - House, Volume 59, page 6527.

They were intended to be permanent withdrawals of lands owned by the U.S., withholding the waterpower interests in lands from private appropriation and disposal under the public land laws for the public benefit of preserving waterpower values for future generations.

When the FPA passed, it included a unique withdrawal authority. The withdrawals were made simply upon an application to investigate or develop waterpower. This concept was drafted by the officials of the DOI, and I believe was intended to be made for efficiency and to save Congress the burden of continually passing further legislation. The connection between the new automatic withdrawals and previous withdrawals is made in the third sentence, which combined the authority for automatic withdrawals with the withdrawals made under previous authority granted to the Presidents, the Secretaries, and the Directors of the USGS with this phrase, "value of any lands of the United States so applied for, or heretofore or hereafter reserved or classified as power sites, will not be injured or destroyed for the purposes of power development." This statement gave all of these withdrawals that were being managed by the USGS, within the DOI, a similar "force and effect" by the new law. Congress had been legislating authority for the Secretary to make and manage withdrawals for many years, and this automatic withdrawal is the finishing piece of a national waterpower policy.

Another action that followed the passage of the act further demonstrates the original intent that these automatic withdrawals were to be another Secretarial withdrawal. Immediately after passage, the USGS, the Board of Appeals, and the Federal Power Commission instituted a new procedure for reserving power sites. The procedure would allow the Director of the USGS to use the classification authority of 1879 with the authority under the FPA to make waterpower classification recommendations to the Secretary of the Interior. This process, "would save time, because all necessary action would be taken in the department, and would lighten the President's labors."[24] There certainly seems to be a connection with this new procedure and the right of the President to make and maintain withdrawals. (There were approximately 460 such Power Site Classifications made between 1920 and 1977 covering 2.7 million acres.)

Yet another action ties the waterpower policy of retaining the lands in the U.S. with interim use (allowing locations, entries, or selections) and the responsibility of the Secretary. On September 2, 1921, in an Opinion of the Attorney General to the Secretary of the Interior,[25] he stated,

> "The inclusion of **lands in a proposed project** under the provisions of the Federal Water Power Act of June 10, 1920 (41 Stat. 1063; 1075), **or the reservation or classification of lands as power sites**, does not operate to prevent the patenting of such lands without power reservation, if it shall be found by the

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[24] February 1, 1921, letter to the Secretary of the Interior from the Director of the USGS, conveying Power Site Classification Number 1, with concurrence by O.C. Merrill, Executive Secretary, Federal Power Commission.

[25] Volume 33, Opinions of the Attorney General, pages 34-39.

> proper administrative officials that they are without power value and have been mistakenly included in a power project or erroneously reserved or classified as power sites."

At the time, the "proper administrative officials" were the staff of the Secretary, specifically in the USGS. [Note: This opinion was used to establish DOI's policy for cancellations, revocations, or vacations of power site withdrawals.] This policy was in place and followed until 1982, with the exception of a few withdrawals that were restored because of higher priority values.

Additionally, one more opinion ties the automatic withdrawals to other legislated withdrawals administered by the Secretary. On December 2, 1959, the Associate Solicitor, Division of Public Lands (C.R. Bradshaw), sent a memorandum to the Solicitor, in which he states,

> "I believe that Congress clearly intended that the Federal Power Act should operate to reserve all public lands which, **upon the basis of fact found by the Geological Survey**, were valuable for power site purposes, and once the land has been found to be valuable classification is, under the act, a mere ministerial duty."

Therefore, these automatic withdrawals for Federal power projects appear to be for the same purpose as the rest of the reservoir and waterpower withdrawals that were the responsibility of the Secretary—to keep waterpower values in Federal ownership.

I believe that these withdrawals are a "reservation" as defined by the FPA. They are essentially a permanent segregation of the waterpower interests located within national monuments, national parks, national forests, tribal lands embraced within Indian reservations, military reservations, and other lands and interests in lands owned by the U.S. They are withheld from private appropriation and disposal under the public land laws, keeping the remaining resources in Federal control. However, under the provisions of Section 24 of the FPA, it is only the waterpower interest that is being held for a public purpose; the title to the lands may pass to private ownership. This reservation was an integral part of a waterpower policy that Congress had been developing through legislation for years. This national waterpower policy is clear - these automatic withdrawals were intended to be reservations.

Responsibilities

Withdrawals. There are different opinions causing confusion over the second issue found within the first sentence. The second part of the first sentence of Section 24, FPA, also states, "...until otherwise directed by the commission or by Congress." Some would argue that this means that the Commission has the authority to change the reserved status, i.e., vacate the automatic withdrawals. Others would argue that it means the Commission may allow entry, location, or other disposal because now they can issue patent with a waterpower reservation, thus splitting the waterpower values from the land estate (split estate.)

The following opinions and facts support the opinion that the phrase refers to the right to patent the lands with a reservation (and, of course, Congress can make future alterations to the existing laws). I do not believe the Congress intended that the Secretary of Agriculture or the Secretary of War would become active in the withdrawal business. I do not believe that the phrase "until otherwise directed by the commission or Congress" refers to the cancellation, revocation, or vacation of any of the withdrawals. This is substantiated by the already quoted opinion of September 2, 1921,[26] by Mr. Harry M. Daugherty:

> "The inclusion of lands in a proposed project under the provisions of the Federal Water Power Act of June 10, 1920 (41 Stat. 1063; 1075), or the reservation or classification of lands as power sites, does not operate to prevent the patenting of such lands without power reservation, if it shall be found by the proper administrative officials that **they are without power value and have been mistakenly included in a power project or erroneously reserved or classified as power sites**."

I interpret this to mean that the only recourse for the disposal of the automatic withdrawals, reservations, and classifications was a finding by the proper administrative officials that they are without power value and have been mistakenly included in a power project or erroneously reserved or classified as power sites.

However, there is the question about who are these "proper administrative officials?" The answer lies in Section 2 of the Federal Water Power Act itself. It states, "The **work of the commission shall be performed by** and through the Departments of War, Interior, and Agriculture and **their engineering, technical, clerical, and other personnel** except as may be otherwise provided by law." Congressman Lee from Georgia, in his speech on May 4, 1920, proudly states that, "Up to the present time water powers on the navigable rivers have been administered by the War Department, on the national forests by the Department of Agriculture, and on the public lands by the Department of the Interior. Under the provisions of the bill now agreed upon all water powers over which the United States has any jurisdiction will hereafter be administered by a commission composed of the Secretaries of War, Interior, and Agriculture, **a measure by which duplication of work may be avoided**, a common policy pursued, and the combined efforts of the three departments directed toward a constructive national program of intelligent economical utilization of our water-power resources." This is evidence that new administrative officials were not created by the FPA; the administrative officials were indeed the staff of the Secretary, specifically in the USGS.

Therefore, neither the FPA nor the first sentence is referring to removing the reserves. Further, the FPA is relying on the Secretary of the Interior to furnish the staff. The question remaining, then, is what does it mean?

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[26] Volume 33, Opinions of the Attorney General, pages 34-39.

Split Estate. A very unique provision of Section 24 of the FPA, which came from the Public Lands Committee and was explained by Chairman Scott Ferris, is that the FPC may allow entry, location, or other disposal on the withdrawals. There is evidence that the last part of the first sentence refers to this interim use and to being able to issue patent with a waterpower reservation, thus splitting the waterpower values from the land estate (split estate.)

The argument that the phrase "until otherwise directed by the commission or Congress" refers to a determination and subsequent patents is again substantiated by the already twice quoted opinion of September 2, 1921,[27] Mr. Harry M. Daugherty. He further stated that, "As to all other power-site reservations the only authority given to the commission is to make findings which will result in authorizing the disposal of the lands subject to their future possible use for water-power purposes upon making compensation for improvements, etc."

Another item which sheds light on the topic is the General Land Office Circular Number 729, of November 20, 1920, which addressed all of these withdrawals:

> "Applications of any sort filed subsequent to June 10, 1920, looking toward the acquisition of title to public or reserved lands, within, or in conflict with power projects under this act, or which shall have been 'reserved or classified as power sites,' will be governed by the following rules..."
>
> "1. You will at once **reject**, subject to appeal, any application filed *subsequent* to June 10, 1920, which is wholly in conflict with **lands reserved or classified as power sites, or covered by a power application under this act**, except..."

and

> "4. Whenever you find it necessary to reject an application, in carrying out these instructions, you should inform the applicant that he is at liberty **to file an application for the restoration of such withdrawn lands**, under the provisions of section 24 of The Federal Water Power Act..."[28]

This was fairly straightforward. However, the circular closed with the following statement that sheds additional light on the thinking of that day:

> "Lands within final power permits under the act of February 15, 1901 (31 Stat. 790), or transmission line permits or approved rights of way, whether under the said act of February 15, 1901, or the act of March 4, 1911 (36 Stat. 1253) are **deemed 'classified as valuable for power purposes**,' and, whether withdrawn as

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[27] Volume 33, Opinions of the Attorney General, pages 34-39.

[28] 47 L. D. 595-598.

power site reserves or not, occupy the status of withdrawn lands for the purposes of these regulations."

This is evidence that all of the withdrawals were considered permanent although they could be patented under the provisions of Section 24 of the FPA.

Amendments to the Federal Power Act and Subsequent Actions

The original FWPA was administered by this FPC composed of the Secretary of Agriculture, the Secretary of Interior, and the Secretary of War. However, on June 23, 1930, the FPC was reorganized as a five-person body, independent of those Secretaries. This reorganization relieved the Secretaries of daily administration and allowed for the hiring of staff by the Commission, but "no regulations, actions, investigations, or other proceedings under the Federal Water Power Act existing or pending at the time of the approval of this Act shall abate or otherwise be affected by reasons of the provisions of this Act."[29] This amendment did not change any of the Secretary of the Interior's authority, responsibility, or administration over the withdrawals. The act was amended again on August 26, 1935, when the name was changed to the Federal Power Act (FPA).[30]

On July 20, 1966, the Secretary of the Interior approved a Memorandum of Understanding (MOU) with the FPC. In the preamble, the MOU states that the FPC has jurisdiction over the "power values" on the public lands that are classified, withdrawn, or reserved for power purposes by virtue of Section 24 of the FPA.[31] There is no mention of authority over the lands, just the power values. This MOU provides for the consideration of revocation or vacation of power withdrawals by petition as provided by the FPA.

The MOU clarified coordination of responsibilities. In the MOU, which has not been nullified, there is a separation between the jurisdiction of power values (FPC), authority to classify lands for power and certain other purposes (USGS), and administration of lands classified, withdrawn, or reserved for power purposes (BLM). It's wording is consistent with other evidence that the

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[29] June 23, 1930, Public, No. 412, Chapter 572, 46 Stat. 797; 16 U.S.C. 792. "*An Act To reorganize the Federal Power Commission.*"

[30] August 26, 1935, Public, No. 333, Chapter 687, 49 Stat. 838; 16 U.S.C. 791a-825. "*An Act To provide for control and regulation of public-utility holding companies, and for other purposes.*" Public Utility Act of 1935.

[31] This is confirmed in practice. In the DOI, USGS Manual (Part 636, Chapter 1, Part .5, Agency Jurisdiction, Section A, Federal Power Commission), "The Commission has exclusive jurisdiction over allowance of interim use of federal lands,... if these lands are withdrawn in a Federal Power Project."

Secretary of the Interior has special responsibilities over withdrawals and has the "proper administrative officials" to determine power values to revoke waterpower withdrawals.

For roughly 50 years, DOI regulations served the management of the FPA well. The Federal workforce was trained, knowledgeable, and experienced. But in the 1970's, several things happened that forever changed the regime.

On October 21, 1976, the Federal Land Policy and Management Act (FLPMA)[32] solidified several miscellaneous authorities for the BLM. This included that the Secretary of the Interior "is authorized to make, modify, extend, or revoke withdrawals but only in accordance with the provisions and limitations of this section." Section 24 of the FPA was not altered. However, the act did not acknowledge any provision for FERC to be able to vacate Federal power project withdrawals. FLPMA also required the review of existing withdrawals, which put a large new workload on the existing staff of the Bureau of Land Management (BLM). This requirement also stressed the limited staff of the USGS and the FPC. USGS simply did not have the capability to handle withdrawal review of the waterpower withdrawals.

The situation worsened when Congress passed the Public Utility Regulatory Policies Act of 1978 (PURPA).[33] The FPC would no longer operate as an independent commission, and would become the Federal Energy Regulatory Commission (FERC) under the Secretary of Energy. PURPA is significant for a couple of reasons. First, if there was any confusion about automatic withdrawals, Congress had the opportunity to clarify whether the new FERC had some sort of withdrawal responsibilities in this act. The act is silent on the matter of automatic withdrawals. Second, the change in organization as a result of PURPA complicated communication between the Department of Energy and the Department of the Interior. As the FPC staff was changing organization, they were simultaneously inundated with new applications, and shortcuts began happening. Notices from FERC to BLM were inadequate because the filings were inadequate. B[36]LM notations of the records were changed because of the volume of the workload. Public notices were discontinued, land lists were not made, and perhaps most important of all, there was an attitude change. When much of the volume of applications were allowed to expire without development, good record keeping seemed futile. New employees were not trained and were not practicing the directives of the Department of the Interior.

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[32] October 21, 1976, Public Law 94-579, 90 Stat. 2743-2794. "*An Act To establish public land policy; to establish guidelines for its administration; to provide for the management, protection, development, and enhancement of the public lands; and for other purposes*."

[33] November 9, 1978, Public Law 95-617, 92 Stat. 3117-3173. "*An Act to suspend until the close of June 30, 1980, the duty on certain doxorubicin hydrochloride antibiotics*." Public Utility Regulatory Policies Act of 1978.

Successful practices and procedures were changed by actions in 1981 and 1982 when the Secretary of the Interior moved the administration of these withdrawals within the Department. From 1920 to 1982, the Secretary administered these withdrawals through USGS. In 1982, the organization (Conservation Division) administering these reservations was transferred out of USGS,[37] through the Minerals Management Service, to BLM,[38] where it remains. New procedures have not been formalized and the experienced staff that was transferred with the function is essentially gone.

After the transfers, the waterpower staff was given the priority of withdrawal review and discontinued many of the other duties that had been requirements of the FPA. Within the USGS, this staff would prepare a report signed by the Director of the Geological Survey making clearly substantiated recommendations from the Department of the Interior to the FPC. These recommendations include denial, restrictive stipulations, outright restoration, or Section 24 determinations without stipulations.[39] After the transfer, this function was discontinued.

BLM began requesting that FERC review the automatic withdrawals for Federal power projects. Then, under the assumption that FERC had the responsibility, a plan was made to vacate all of the withdrawals that were not occupied by a current preliminary permit or existing license.

Since the transfer of the waterpower function from USGS to BLM, all references to waterpower withdrawal have been dropped from the Code of Federal Regulations (CFR). The sole exception is 18 CFR 25.1 which covers the procedure for making an application for determination under the FPA. Within the DOI, two manual sections have disappeared in the interest of streamlining and simplifying the manual system: the BLM Manual 2022, which covered the procedures for waterpower lands, and the USGS Manual Part 636, which covered the waterpower branch that was transferred in 1982.

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[37] January 19, 1982, Secretarial Order No. 3071. Under this order, the Secretary transferred the entire Conservation Division of the Geological Survey, including the Waterpower function, to the new Minerals Management Service (MMS). The original recommendation was to leave this function in the USGS, but the exception was missing in the Secretarial Order.

[38] December 3, 1982, Secretarial Order No. 3087 consolidates the Department's onshore minerals management function, including those in the MMS, to the Bureau of Land Management. The waterpower program was organizationally in the on-shore function, but not as a minerals management function. On February 7, 1983, BLM Director, Robert Burford, made a conscious decision to integrate the waterpower program into the BLM.

[36] Kuka, Tommy. <u>It Has Been Debated, Decided, and Declared</u> - <u>A Chronicle of the Requirements for the Waterpower and Reservoir Resources Program</u>, Bureau of Land Management, National Applied Resource Sciences Center, 1966, DOI, USGS Manual (Part 636, Chapter 2), page 62-65.

The Supreme Court Ruling of 1984

On May 15, 1984, the Supreme Court of the United States decided the case titled, "Escondido Mutual Water Company, et al., v. La Jolla, Rincon, San Pasqual, Puma and Pala Bands of Mission Indians, et al."[40] In issuing their decision, the court conveyed much information on the history of the FPA, the intentions of the provisions of Section 24, and the current responsibilities of the Secretary.

The decision was clear that: 1) If land utilized by a Federal Power Project is in a reservation administered by the Department of the Interior, then 2) the Secretary has the responsibility to recommend conditions to FERC for the adequate protection and utilization of the reservations, and 3) the recommendations are mandatory on FERC.

The Court pointed out that the creation of the new FPC and subsequent changes did not relieve the Departments of their original responsibilities. The Court also pointed out that in a memorandum explaining the bill, O.C. Merrill, one of the chief draftsman of the act and later the first new FPC Secretary, explained that the creation of the FPC "will not interfere with the **special responsibilities** which the several Departments have over the national Forests, public lands and navigable rivers."[41] It was never intended that the FPC, now FERC, would assume withdrawal authority or administration duties from the Department of the Interior. Further, until 1986, it was Department of Interior's policy that the FPC's responsibility ended with the finding that other uses of the lands either would or would not hinder the waterpower values.

Summary

The evidence provided points to the conclusion that the entire Section 24 is the responsibility of the Secretary of the Interior:

- The first sentence of Section 24: The automatic withdrawal (created by an application to FERC) is the responsibility of the Secretary. The FPC may **allow interim use** (of the lands as provided further in the FPA).

- The second sentence of Section 24: The Secretary is responsible for the automatic withdrawals. Whether the Secretary is part of the FPC or the Commission is independent, BLM is the official keeper of land records for the Federal Government and there is no issue that they must be notified of the creation of a withdrawal.

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[40] 52 LW 4588, Slip op. at 1.

[41] 52 LW 4590, Slip op. at 7.

- The third sentence of Section 24: The Secretary has the responsibility to maintain the "proper administrative officials" to recommend the determination and to put reservations in the title. The Secretary shall declare the lands open to location, entry, or selection.

- The remaining language of Section 24: The remaining language is outdated, and no longer applies. However, in the same legislative history that has been documented here, it was the Secretary of the Interior's responsibilities that Congress targeted in this language, including issuing patents for lands previously entered.

Appendix A:
Time Line for the Federal Water Power Act
April 16, 1999

06/10/1920	H.R. 3184	Passage
05/04/1920	H.R. 3184	"...duplication of work may be avoided;" War - navigable rivers; Agriculture - forests; Interior - public lands; automatic permanent reserve.[42]
01/07/1920	H.R. 3184	Debate - Sec. 18, August 8, 1917; one statement on Section 24.[43]
07/01/1919	H.R. 3184	Debate on Section 24.[44]
06/24/1919	H.R. 3184	Report No. 61, Committee on Water Power; report ordered printed; Section 24 essentially final.[45]
05/20/1919	H.R. 3184	Resolution to appoint a special Committee; reported to House the previous bill without amendment.[46]
02/26/1919	40 Stat.1179	Secretary of the Interior is directed to classify power-site lands which shall be subject to withdrawal.
02/26/1919	S. 1419	Report No. 1147; committee of conference; recommends that the Senate agree to the amendments of the House; Section 24 essentially final.[47]
09/05/1918	H.R. 3184	Passed the House.[48]
09/05/1918		Debate on Section 24; the Secretary of the Interior's right to remove withdrawals.[49]

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[42] May 4, 1920; Debate; Congressional Record - House; page 6527.

[43] January 7, 1920; Debate; Congressional Record - House; page 1173.

[44] July 1, 1919; Debate; Congressional Record - House; page 2242-2243.

[45] H.R. Report No. 61, 6/24/1919, pages 1 through 11; Section 24 is on page 10.

[46] H.R. Report No. 61, 6/24/1919, pages 1 & 2.

[47] H.R. Report No. 1147, 2/26/1919, pages 1 through 18, Section 24 on page 13.

[48] H.R. Report No. 61, 6/24/1919, page 1.

[49] 9/5/1918; Debate; Congressional Record - House; pages 10034 through 10037+.

06/28/1918	S. 1419	Report No. 715, Committee on Water Power, Committed to the Committee of the Whole House and ordered to be printed; Section 24 essentially final.[50]
05/27/1918	H.R. 3184	End of debates by Joint Water Power Committee.[51]
05/13/1918	S. 1419	Report;[52] Committee on Water Power; debate on Section 24; debate on withdrawal review.[53]
03/18/1918	H.R. 3184	Beginning of debates by Joint Water Power Committee.[54]
02/27/1918		Amended Secretaries Bill; - Proposed House substitute for Senate bill 1419, see Exhibit B, Section 24 is essentially final.[55]
1918	H. Res. 216	Speaker of the House is to appoint a special committee to whom all bills and resolutions pertaining to the development or utilization of water power shall be referred.
12/15/1917	S. 1419	Referred to the House Committee on Interstate and Foreign Commerce.[56]
12/14/1917	S. 1419[57]	Passed the Senate; provided for the construction of dams for water power purposes on navigable streams only.[58]

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[50] H.R. Report No. 715, 6/28/1918, pages 1 through 46; Section 24 is on pages 11 and 12.

[51] H.R. Report No. 61, 6/24/1919, page 1.

[52] Hearings Before The Committee On Water Power of the House of Representatives; Sixty-Fifth Congress, Second Session, March 18 to May 15, 1918, Parts 1, 2, 3, and 4, (with contents).

[53] Debate; 5/13/1918, Hearings Report, pages 623 and 624.

[54] H.R. Report No. 61, 6/24/1919, page 1.

[55] H.R. Report No. 715, 6/28/1918, pages 14 and 15, Section 24 is on page 38.

[56] H.R. Report No. 715, 6/28/1918, page 13.

[57] "An act to amend an act entitled 'An act to regulate the construction of dams across navigable waters,' approved June 21, 1906, as amended by the act approved June 23, 1910, and to provide for the improvement and development of waterways for the uses of interstate and foreign commerce."

[58] H.R. Report No. 715, 6/28/1918, page 13.

12/??/1917 (Early [59])		President Wilson drafted a bill with words for the creation of the Federal Power Commission;[60] [61] Section 24 essentially final, see exhibit A.[62]
07/14/1916		Committee on Interstate and Foreign Commerce; construction of dams on navigable waters; passed the House.[63]
06/09/1916	39 Stat.219	Secretary of the Interior is directed to classify power-site lands which shall be subject to withdrawal.
03/14/1916		Debate over leasing government land.[64]
01/31/1916	H.R. 408	Calendar No. 49; Senate Report No. 66, Part 2;[65] Development of Water Power; Committee on Public Lands; Report of the Views of the Minority; Title and leasing of public domain; ownership of rivers.
01/25/1916	H.R. 408	Calendar No. 49; Senate Report No. 66; Development of Water Power; Committee on Public Lands; Secretary of the Interior can lease lands; split estate.
01/08/1916		Committee on Public Lands; related to waterpower on public land; control by the Secretary of the Interior; passed the House.[66]
01/05/1916	H.R. 408	Debate; Secretary of the Interior can lease waterpower sites; land use and split estate.[67]
01/04/1916	H.R. 408	H.R. Report No. 16, Water-Power development and Use of Public lands; Committee on the Public Lands; to provide for the development of waterpower and the uses of Public lands.
12/09/1914	H.R. 16673	Hearings in the Senate.

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[59] H.R. Report No. 715, 6/28/1918, page 13.

[60] H.R. Report No. 61, 6/24/1919, pages 4 through 11.

[61] H.R. Report No. 715, 6/28/1918, page 13 and 14.

[62] H.R. Report No. 715, 6/28/1918, page 28.

[63] H.R. Report No. 61, 6/24/1919, page 4.

[64] March 14, 1916; Debate; Congressional record - House; pages 4068 and 4069.

[65] Senate Report No. 66, Part 2; Sixty-Fourth Congress, First Session; Development of Water Power, Views of the Minority, Committee on Public Lands, January 31, 1916.

[66] H.R. Report No. 61, 6/24/1919, pages 3 & 4.

[67] 1/5/1916; Debate; Congressional record - House; pages 524 through 560.

08/24/1914	H.R. 16673	Ferris bill; Committee on Public Lands; related to waterpower on public land; control by the Secretary of the Interior; passed the House.[68]
08/11/1914		Congressional record.
08/04/1914		Adams bill; Committee on Interstate and Foreign Commerce; construction of dams on navigable waters; passed the House.[69]
05/08/1914	H.R. 14893	End of hearings.
04/30/1914	H.R. 14893	Beginning of hearings.
01/27/1913	37 Stat.651	Secretary of the Interior is authorized to reserve any lands valuable for power purposes.
03/03/1911	36 Stat.1075	Secretary of the Interior is authorized to reserve any part of said reservation chiefly valuable for power sites and reservoir sites.
1910		General Dam Act; Committee on Interstate and Foreign Commerce; included the Presidents provisions. Comprehensive plan for development of a river system.[70]
06/25/1910	36 Stat.858	Secretary of the Interior is authorized to reserve any lands within any Indian reservation valuable for power or reservoir sites.
06/20/1910	36 Stat.564	There is reserved all land actually or prospectively valuable for the development of water powers or hydroelectric use as designated by the Secretary of the Interior, such lands will not be subject to disposal by the state.
06/01/1910	36 Stat.456	Secretary of the Interior is authorized to set aside and reserve such tracts chiefly valuable for power sites or reservoir sites on the Fort Berthold Indian Reservation.
05/13/1910	36 Stat.367	Secretary of the Interior shall reserve from sale any water-power sites located on the Siletz Indian reservation.
03/03/1909	35 Stat.796	Secretary of the Interior authorized to reserve lands valuable for power sites or reservoir sites.
1908		Rainy River dam was vetoed by President who specified further conditions for approval including charges and time limitations.[71]

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[68] H.R. Report No. 61, 6/24/1919, pages 3 & 4.

[69] H.R. Report No. 61, 6/24/1919, page 4.

[70] H.R. Report No. 61, 6/24/1919, page 3.

[71] H.R. Report No. 61, 6/24/1919, pages 2 & 3.

06/21/1906	34 Stat.386	General Dam Act; same provision as 1899; tighter controls including additional features.[72]
6/17/1902	32 Stat.388	Secretary of the Interior shall withdraw from public entry the lands required for any irrigation works and restore to public entry any lands when such lands are not required.
2/15/1901	31 Stat.790	Secretary of the Interior is authorized to permit the use of rights-of-way through public lands, forests and other reservations for water power.
1899		River & Harbor Act; Congress consent for obstructions in navigable water; Secretary of War has to pass on plans.[73]
1890		River & Harbor Act; consent of Secretary of War.[74]
10/02/1888	25 Stat.526	Secretary of the Interior (through the USGS) shall select reservoir sites and the lands shall be reserved from sale as property of the United states.

[72] H.R. Report No. 61, 6/24/1919, page 2.

[73] H.R. Report No. 61, 6/24/1919, page 2.

[74] H.R. Report No. 61, 6/24/1919, page 2.

Index

Acronym

- DOI 2, 9
- FERC 1
- FLPMA 17
- FPA 1, 2
- FPC 8, 10
- MOU 16
- PURPA 17
- U.S. 2, 10, 13
- USGS 2, 3

Definition

- Public lands 1
- Reservations 1
- Secretary 1
- split estate 13, 15
- waterpower 2

Legislation

- August 26, 1935, Public. No. 333, Chapter 687, 49 Stat., 838; 16 ..... 11, 16
- February 1, 1905, Chapter 288, 33 Stat 628 7
- February 15, 1901, Chapter 372, 31 Stat., 790; 43 U.S.C. 959. ..... 3, 7
- February26,1919, Public, No.219, Chapter47, 40Stat.,1179-1 10
- June 21, 1906, Public, No. 258, Chapter 3504, 34 Stat., 325-384. 3
- June 23, 1930, Public, No. 412, Chapter 572, 46 Stat., 797; 16 U 16
- June 25, 1910, Chapter 421, 36 Stat., 847-848; 16 U.S.C. 471, 43 5
- March 3, 1909, Public, No. 316, Chapter 263, 35 Stat., 781-815. 5
- March 20, 1888, No. 7, 25 Stat. 618. 3
- March 3, 1879, Chapter 182, 20 Stat. 394; 43 U.S.C. 31. 3
- March 4, 1911, Chapter 238, 36 Stat 1253 7
- May 1, 1906 (34 Stat., 163) 7
- May 14, 1896, Chapter 179, 29 Stat 120 7
- October 2, 1888, Chapter 1069, 25 Stat., 526; 43 U.S.C. 662. 3